

**KENTUCKY PERSONNEL BOARD
MINUTES OF DECEMBER 11, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on December 11, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Amanda Cloyd, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD NOVEMBER, 20, 2015**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Dr. Stevens seconded and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek reported that Ms. Connie Lashbrook, Administrative Specialist III, joined the Personnel Board on December 1, 2015. She transferred from the Cabinet for Health and Family Services. She is doing a great job thus far.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

Secretary Thomas Stephens and the Hon. Rosemary Holbrook came forward to present the Personnel Cabinet's report.

Mr. Stephens introduced himself and stated he was happy to be back at the Personnel Cabinet. Mr. Stephens stated that he was General Counsel of the Cabinet about eight years ago, so he sees a lot of familiar faces.

Ms. Holbrook reported that the Cabinet was on-track submitting reports to the IRS concerning certain requirements as far as insurance being offered to employees. Employees will soon be receiving 2015 W2s and ACA Health Insurance Coverage Reporting Forms.

Ms. Holbrook stated that employees are required to complete refresher courses on accurate time reporting and security awareness.

Ms. Holbrook reported that the Kentucky Employees Charitable Campaign (KECC) raised a total of 1.108 million dollars so far. The campaign ends December 31, 2015.

5. ORAL ARGUMENTS

A. **Donald Newell v. ~~Energy and Environment Cabinet~~ (Withdrawn)**

B. **Emily Scholfield v. Justice and Public Safety Cabinet/Corrections**

Present for oral arguments were counsel for Appellant, the Hon. Jessica Durden, Appellant Scholfield, and counsel for Appellee, the Hon. Edward Baylous. After presenting oral arguments, the parties answered questions from the Board.

6. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Cloyd seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (9:55 a.m.)

Mr. Hutcheson moved to return to open session. Mr. Gillis seconded and the motion carried 6-0. (10:32 a.m.)

7. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

**A. Donald Newell v. Energy and Environment Cabinet (2013-270)
(On Remand)**

Mr. Hutcheson, having noted Appellee's exceptions, Appellant's exceptions, Appellee's response to Appellant's exceptions, Appellant's response to Appellee's exceptions, and Appellee's withdrawal of request for oral argument, moved to accept the recommended order sustaining the appeal to the extent therein. Ms. Cloyd seconded and the motion carried 5-0, with Mr. Gillis recusing.

B. Emily Scholfield v. Justice and Public Safety Cabinet/Corrections (2015-085)

Judge Chandler, having noted Appellee's exceptions, Appellant's reply, and oral arguments, moved to accept the recommended order sustaining the appeal to the extent therein (with clerical correction). Mr. Gillis seconded and the motion carried 5-0, with Ms. Cloyd recusing.

**C. Chad N. Knight v. Justice and Public Safety Cabinet/Corrections (2014-188)
Deferred from November**

Mr. Hutcheson, having noted Appellant's exceptions, Appellee's response, and oral arguments, moved to accept the Final Order sustaining the appeal to the extent therein, as attached to the minutes. Judge Chandler seconded and the motion carried 6-0.

**D. Mamayou Bamazi v. Cabinet for Health and Family Services (2015-051)
Deferred from November**

Mr. Gillis moved to accept the Final Order sustaining the appeal to the extent therein, as attached to the minutes. Ms. Cloyd seconded and the motion carried 6-0.

**E. Michelle Carmody v. Cabinet for Health and Family Services (2015-074)
Deferred from November**

Mr. Gillis moved to accept the Final Order sustaining the appeal to the extent therein, as attached to the minutes. Dr. Stevens seconded and the motion carried 6-0.

F. Michael R. Baker (2015-114) and Hal D. Satterly (2015-117) v. Transportation Cabinet

Judge Chandler moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

G. Darletha S. Clark v. Public Protection Cabinet (2015-142)

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

H. Richard Gray v. Justice and Public Safety Cabinet/Corrections and Personnel Cabinet (2015-024)

Mr. Hutcheson moved to accept the recommended order sustaining the appeal to the extent therein. Dr. Stevens seconded and the motion carried 5-0, with Mr. Gillis recusing.

8. WITHDRAWALS

Ms. Cloyd moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Dr. Stevens seconded and the motion carried 6-0.

- A. Cary Brandon Bishop v. Finance and Administration Cabinet
- B. James C. Estill v. Cabinet for Health and Family Services
- C. Celestine Sims v. Personnel Cabinet

9. SETTLEMENTS

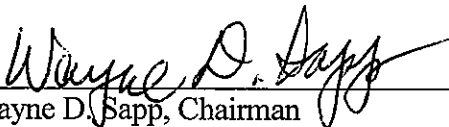
Ms. Cloyd moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Dr. Stevens seconded and the motion carried 6-0.

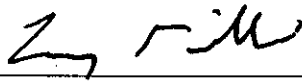
- A. Dustin Adams v. Justice and Public Safety Cabinet/Corrections (mediated)
- B. Tina Evans v. Cabinet for Health and Family Services (mediated)
- C. Tim Lee Parks v. Transportation Cabinet

10. OTHER

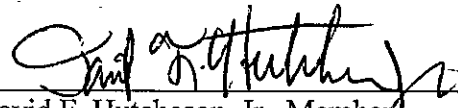
Mr. Sipek stated that the Board members will see a change in the style of recommended orders and final orders going forward. The Board has always put the appointing authority, usually the Secretary of the agency. However, it appears the information may not be necessary and it may prevent further problems; therefore, the caption of the appeal will not contain the appointing authority, unless directed otherwise.


There being no further business, Dr. Stevens moved to adjourn. Ms. Cloyd seconded and the motion carried 6-0. (10:40 a.m.)


Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman

David B. Stevens, Member


David F. Hutcheson, Jr., Member


Amanda Cloyd, Member

Tommy W. Chandler, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-051**

MAMAYOU BAMAZI

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** ** ** **

The Board at its regular December 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 14, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete Conclusion of Law number 4 and substitute the following:**

4. While the term "insubordination" has a negative tenor, such behavior includes a refusal to follow the directive of a supervisor or superior. On January 17, 2015, the Appellant, by refusing mandation, was insubordinate and, therefore, violated Policy/Procedure No. 7.13.2. Such conduct constituted a lack of good behavior.

5. However, the Board in taking into account that this was Appellant's first refusal of mandation that had resulted in a disciplinary fine, believes that a lesser fine would be sufficient to achieve the desired result, that is, to have Appellant's behavior conform with expectations and policy. Therefore, the Board concludes a lesser

disciplinary fine is in order. A one-day disciplinary fine is appropriate under all the surrounding circumstances.

B. Delete the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **MAMAYOU BAMAZI V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-051)** be **SUSTAINED** to the extent that the three-day disciplinary fine imposed upon Appellant is reduced to a one-day disciplinary fine. Appellant shall be awarded back pay, and benefits pursuant to KRS 18A.095(22)(c) and otherwise be made whole. The Board orders Appellee shall reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board pursuant to KRS 18A.095(25).

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent herein.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 15th day of December, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Matthew Perdue
Mamayou Bamazi
J.P. Hamm

7. The evidence of record reveals that the three-day disciplinary fine imposed upon Ms. Carmody was standard for a first refusal to work mandatory overtime. However, the Board in further reviewing the matter concludes that the three-day disciplinary fine imposed upon Appellant was excessive given the overall nature of the matter in view of Appellant's previous work record and, thus, will reduce the disciplinary fine accordingly. A one-day disciplinary fine is appropriate under all the surrounding circumstances.

B. Delete the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **MICHELLE CARMODY V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-074)** be **SUSTAINED** to the extent that the three-day disciplinary fine imposed upon Appellant is reduced to a one-day disciplinary fine. Appellant shall be awarded back pay, and benefits pursuant to KRS 18A.095(22)(c) and otherwise be made whole. The Board orders Appellee shall reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board pursuant to KRS 18A.095(25).

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent herein.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 15th day of December, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Michelle Carmody
J.P. Hamm

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-188**

CHAD N. KNIGHT

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** ** ** **

The Board at its regular December 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 23, 2015, having noted Appellant's exceptions, Appellee's response to exceptions, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background number 23 and substitute the following:

23. **Joel Dunlap** has been employed by the Department of Corrections for the past 25 years. He started his career as a Correctional Officer and has been promoted up the ranks to his current position of Deputy Warden of Security at KSP.

B. **Delete** Findings of Fact numbers 16, 17, 18 and 19 and substitute the following:

16. The Board finds that Lt. Hardin, the armorer, should not have allowed Officer Mumma to have checked out the 9MM pistols from the armory. The Board also finds that Lt. Hardin did in fact receive a written reprimand for this conduct.

17. The Board finds that Appellant did not make a false statement to Warden White on June 9, 2014 and finds Appellant credible that he did not make a statement to Warden White that Deputy Warden Dunlap had authorized Appellant to use 9MM pistols on the hospital trip. The Board finds rather that Appellant instead had attempted to tell Warden White that being the subject of an investigation Deputy Warden Dunlap should have known what was going on.

18. The Board finds that the decision then to have demoted Appellant three grades and to have involuntarily transferred Appellant from the Kentucky State Penitentiary to the Western Kentucky Correctional Complex was in fact excessive and erroneous under all the circumstances. These circumstances include that while Appellant should not have checked the pistols out of the armory, that as Lt. Hardin, the Armorer, had allowed this to occur and received only a written reprimand, that Appellant should also have received lesser punishment than a three-grade suspension and an involuntary transfer.

C. **Delete** Conclusions of Law numbers 2, 3, 4 and 5 and substitute the following:

2. The Board concludes as a matter of law that a preponderance of the evidence did not support the allegation that Appellant had violated CPP 3.1, Section II(A)(5) and that Appellant did not make a false statement toward White on June 9, 2014, regarding Deputy Warden Dunlap's involvement in the use of the 9MM pistols on the hospital trip.

3. The Board thus concludes that the Appellee's decision to demote Appellant three grades from Correctional Captain to Correctional Officer was excessive and erroneous.

4. The Board also concludes that the Appellee was excessive and erroneous in its decision to have involuntarily transferred Appellant from the Kentucky State Penitentiary to the Western Kentucky Correctional Complex.

5. The Board concludes rather that the appropriate corrective action in this case for improperly directing a subordinate to check out two weapons from the Armory should be a written reprimand, as that was the action taken against Lt. Hardin, the Armorer.

D. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **CHAD N. KNIGHT VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-188)** is **SUSTAINED to the extent** that the demotion of Appellant be rescinded and the decision to have involuntarily transferred Appellant from the Kentucky State Penitentiary to the Western Kentucky Correctional Complex also be rescinded; that instead he be issued a written reprimand. The Board **FURTHER ORDERS** that the Appellant be restored his previous rank of Correctional Captain or a position of like status and pay, that he be available for assignment to any correctional facility located in Lyon County at the discretion of the Department of Corrections. The Appellant shall also have restored to him any back pay he would be due as a result of the improper demotion, pursuant to KRS 18A.095(22). The Appellant should be reimbursed for any leave time he used attending the hearing, any pre-


hearing conferences, and oral argument at the Personnel Board, and to otherwise be made whole.
[KRS 18A.105, 18A.095(25), and 200 KAR 12:030.]

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent therein.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 15th day of December, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Angela Cordery
Hon. Randall C. Teague
Bobbie Underwood